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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,963	12/03/2003	David Ernest Hartley	PA-5351-RFB	4386
9896 7590 04/30/2008 COOK GROUP PATENT OFFICE P.O. BOX 2269 BLOOMINGTON, IN 47402				
EXAMINER				
SEIVERTSON, RYAN J				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
04/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/726,963

**Applicant(s)**

HARTLEY ET AL.

**Examiner**

Ryan Severson

**Art Unit**

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-12 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-12 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown et al. (5,769,887).** Brown reference discloses the prosthesis substantially as claimed including a plurality of self-expanding stents (22, see figure 4c) connected together by flexible links (23) and having a graft (12) covering at least one stent (22b) to define a covered portion and an uncovered portion. The uncovered portion is in the form of a spiral or zig-zag configuration (see figure 4d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 2, 5, 6, 8, 17-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (5,769,887) in view of Aiba et al. (6,221,096).**

5. Regarding claims 2, 8, 17 and 23, Brown reference further discloses that *at least* one stent is covered by the graft (see column 4, line 60 through column 5, line 6) to seal the graft to the vessel wall. However, Brown does not specifically disclose three stents covered by the graft. Attention is drawn to Aiba et al. (hereinafter Aiba) reference, which teaches a graft may cover three stents (see figure 3) to more effectively seal the graft to the vessel wall. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have three stents covered by the graft, as suggested is possible by Brown and specifically disclosed and taught by Aiba to more effectively seal the graft to the vessel wall.

6. Regarding claims 5, 6, and 18-20, Brown reference does not disclose the graft is stitched to the stents. Attention is again drawn to Aiba reference, which teaches the use of a suture to stitch the graft to the stent (see column 5, lines 1-3) to provide a more secure connection between the graft and the stent. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to stitch the graft to the stent of Brown reference, as taught by Aiba reference to provide a secure connection between the stent and graft. Further, the use of a specific knot would have been obvious as the claimed knots provide no unexpected results.

7. Regarding claim 22, the combination of Brown with Aiba does not disclose the uncovered portion comprises 8 to 10 stents. However, it has been held that mere duplication of parts has no patentable significance unless a new and unexpected result

is produced. *In re Harza*, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Therefore, since no new and unexpected result is produced by merely duplicating the existing uncovered stents, the use of 8-10 stents would have been obvious to one of ordinary skill in the art.

8. **Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (5,769,887) in view of Greenberg et al. (2002/0198587).** Brown reference does not disclose the use of barbs on the stent. Attention is drawn to Greenberg et al. reference, which teaches the use of barbs (40, see figure 2) to provide a secure connection between the stent and the vessel wall (see paragraph 28) to prevent migration of the stent in the vessel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the barbs of Greenberg reference with the prosthesis of Brown reference to prevent migration of the stent in the vessel.

9. **Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (5,769,887) in view of Aiba et al. (6,221,096) as applied to claim 17 above, and further in view of Greenberg et al. (2002/0198587).** The combination of Brown with Aiba does not disclose the use of barbs on the stent. Attention is drawn to Greenberg et al. reference, which teaches the use of barbs (40, see figure 2) to provide a secure connection between the stent and the vessel wall (see paragraph 28) to prevent migration of the stent in the vessel. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the barbs of Greenberg reference with the prosthesis of Brown in view of Aiba references to prevent migration of the stent in the vessel.

***Response to Arguments***

10. Applicant's arguments filed 11 February 2008 have been fully considered but they are not persuasive.

11. Applicant first argues the links of Brown reference are not flexible. However, applicant has pointed to no disclosure stating the links are *not* flexible in the Brown patent. Applicants attention is directed to figure 4b, in which the device is shown only partially expanded. The links (23) are shown bent. If the links were not flexible, they would not be capable of bending. Further, the term "flexible" is a relative term, and if the links can bend or flex even a minimal amount, they are interpreted as flexible.

12. Applicant further argues the Brown reference does not meet the four essential features enumerated in the arguments. However, the first three enumerated features in the arguments are not found in the language of the claims at any point (i.e. closing off an initial rupture, providing pressure on a wall of a false lumen, and allowing for variable deflation and curves). Further, even if applicant were to add these limitations into the claims, each of the limitations are functional in nature, and the Brown device is certainly capable of performing each of the three functions.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3731

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3731

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. S./

Examiner, Art Unit 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731